

**Selected Documents from Claim File**

**Claim No. LRF-1998-0807-01**

## CLAIM PAYMENT CHECKLIST

To be used for claims arising prior to 07/01/98

### I. General Information

LRF Claim No: <u>LRF-1998-0807-01</u>	Related Claim Nos: _____
<b>1. Claimant:</b> Name: <u>STEEL ENGINEERS INC / Robert Kurth</u> Address: <u>716 W MESQUITE AVE</u> City, State, Zip: <u>LAS VEGAS NV 89106</u> Telephone: <u>(702) 386-0023 &amp; (435) 586-4613</u> DOPL/LRF No: <u>251091</u>	
<b>2. Claimant's Legal Counsel:</b> Name/Law Firm: <u>ROBERT O KURTH JR, KURTH &amp; ASSOCIATES</u> Address: <u>PO BOX 42816</u> City, State, Zip: <u>LAS VEGAS NV 89116</u> Telephone: <u>(702) 438-5810</u>	
<b>3. Non-Paying Party/Permissive Party:</b> (Entered Appearance <u>  </u> Yes <u>XX</u> No) Name: <u>LONETREE SERVICES INC DBA LONETREE LOG HOMES (DANIEL R WIARDA)</u> Address: <u>2071 N MAIN ST</u> City, State, Zip: <u>CEDAR CITY UT 84720</u> Telephone: <u>(435) 586-6023</u> DOPL No: <u>250382 (Canceled 5/12/98; new entity 356882)</u>	
<b>4. Non-Paying Party/Permissive Party's Legal Counsel:</b> Name/Law Firm: <u>J BRYAN JACKSON</u> Address: <u>157 E CENTER ST</u> City, State, Zip: <u>CEDAR CITY UT 84720</u> Telephone: <u>(435) 586-8450</u>	
<b>5. Original Contractor:</b> Name: <u>LONETREE SERVICES INC dba LONETREE LOG HOMES (DANIEL R WIARDA)</u> Address: <u>2071 N MAIN ST</u> City, State, Zip: <u>CEDAR CITY UT 84720</u> Telephone: <u>(435) 586-6023</u> DOPL No: <u>250382 (Cancelled 05/12/98; new entity 356882)</u>	
<b>6. Amount claimed:</b> <u>\$809,531.00 plus accruing costs and interest</u>	
<b>7. Owner:</b> Name: <u>ROBERT &amp; LAURA KURTH, TRUSTEES OF THE KURTH REVOCABLE TRUST</u> Address: <u>2661 E NEW HARMONY HWY #144</u> City, State, Zip: <u>NEW HARMONY UT 84757</u> Telephone: <u>(435) 586-4613</u>	
<b>8. Subsequent Owner:</b> Date: <u>10/19/98</u> Name: <u>NONE</u> Address: _____ City, State, Zip: _____ Telephone: _____	

9. Owner-Occupied Residence:

Address/Location: 2661 E NEW HARMONY HWY #144, NEW HARMONY UT 84757

Legal Description: Parcel 1: The East 9.13 acres of Lot 4 and the West 10.0 acres of the Southeast quarter of the Southwest quarter of Section 18, Township 38 South, Range 12 West, Salt Lake Base and Meridian. Parcel 2. Beginning at a point South 89° 18'45" East 323.20 feet from the Southwest corner of the Southeast quarter of the Southwest quarter of Section 18, Township 38 South, Range 12 West, Salt Lake Base and Meridian; and running thence South 89° 18'45" East 57.4 feet to an existing fence line; thence North 0° 27'40" East 1347.45 feet along said fence line to the North line of the Southeast quarter of the Southwest quarter of said Section 18; thence North 89° 13'37" West, 65.0 feet; thence South 0° 18'16" West 1347.60 feet to the point of beginning. Commonly known as 2661 East New Harmony Highway #144, New Harmony, Utah 84757.

10. Claim Classification:        Formal   XX   Informal

## II. Claim Processing Information

Initial Claim Processing -- All Claims:	Received	Forwarded
Front Desk	8/7/98	8/10/98
LRF Specialist--set up file, notice of filing, CRIS entry	8/10/98	8/14/98
Permissive Party response Deadline: <u>kks--The permissive party has not been notified because the claimant is the homeowner and will be denied on that basis (the claim has several other defaults: no NCA filing, etc)- kks</u>	10/20/98	
LRF Specialist/Claims Examiner--review	08/14/98	10/28/98

Section's Recommended Disposition -- ALL CLAIMS:  
   Approve for full payment    Approve for partial payment XX Deny    Dismiss  
 Date: 10/20/98  
 Reason(s): Evidence submitted by the claimants indicated that (1) claimants were not qualified beneficiaries during the construction on the residence but were, respectively, a qualified beneficiary who did not participate in the present claim and the homeowner; (2) claimants did not agree with the non-paying party to provide qualified services on the residence, but the contract was between the homeowner and the non-paying party for the purchase/construction of the residence; (3) claimants did not obtain a judgment against the non-paying party for uncompensated qualified services, but for breach of the purchase contract; and (4) if the contract between homeowner and the non-paying party was to be construed as the contract for qualified services, its effective date was prior to the effective date of the Act. Further, the application was incomplete because (1) the building permit application was obtained but there is no evidence that it was ever stamped to become a building permit; and (2) no notice of commencement of action was filed. Finally, claimant claimed \$545,000 for qualified services. Not only is this amount far in excess of the \$75,000 per residence cap on payments, none of it could be shown to be for qualified services. Claimant also claimed \$120,000 for fraud and misrepresentation damages and \$80,000 for punitive damages, none of which should be payable from the Fund.

Board's Recommended Disposition -- INFORMAL CLAIM:  
   Approve for full payment    Approve for partial payment XX Deny    Dismiss  
 Date: 10/21/98  
 Reason(s): See Division's recommended disposition.

**FINAL ORDER -- ALL CLAIMS:**

☐ Approve for full payment ☒ Approve for partial payment ☒ Deny ☐ Dismiss

Date: ~~11/02/98~~ 12/8/99

Reason(s): See Division's recommended disposition.

If Order is fully or partially denied:

Reason(s) for denial: See Division's recommended disposition above.

Appeal deadline: 12/02/98 1/8/99

Date request for agency review filed:

Date/Nature of Order:

**III. Jurisdiction Checklist**

Y/N	Inits	Date	Issue
NO	ljb	10/20/98	<b>Is Application Jurisdictionally Sound?</b>
NO	ljb	10/19/98	<p>A. Claimant brought civil action against the non-paying party within 180 days from the last day claimant provided qualified services, which action was to recover monies owed him for the services, or was precluded from doing so by the non-paying party's bankruptcy filing within 180 days of claimant's completion of qualified services. (38-11-204(3)(d)(i)(A) and (iv).  <u>Claimant states that they provided qualified services from November 3, 1994 through December, 1995. (Claim file p. 2) There is no evidence that qualified services were actually provided in the file. (Claim file as of 10/19/98) Claimant Kurth filed a civil action against the non-paying party on or about December 14, 1995 for breach of construction contract but not for uncompensated qualified services. (Claim file pp. 3, 18) Although the time elapsed from December, presumably 12/01/95 to 12/14/95 is substantially less than 180 days from the date Kurth's civil action was filed, the civil action was not for monies owed for uncompensated qualified services. Claimant Steel Engineers did not file any civil action against Lonetree.. Accordingly, no civil action was filed within the 180 day time period to recover monies owed for qualified services.</u></p>
NO	ljb	10/19/98	<p>B. If civil action filing is required, notice of commencement of action was timely filed within 30 days of claimant's filing of civil action. (38-11-204(3)(d)(i)(B))  <u>There is no record of any Notice of Commencement of Action filing for this claim. (LRF database as of 10/19/98).</u></p>

NO	ljb	10/19/98	<p>C. Claim application was timely filed within 120 days of the civil judgment or bankruptcy filing. (38-11-204(2)).</p> <p><u>Claimant states that he obtained a judgment on 03/24/98. (Claim file p. 3) This statement is substantiated by a date stamped copy of the Judgment on the Verdict. (Claim file p. 58) This judgment was not for compensation for qualified services provided by claimants but was in Kurth's favor for breach of construction contract, and fraud issues so, technically, there was no relevant judgment in Kurth's favor. The present claim was filed on 08/07/98, 136 days later. Accordingly, even if the Judgment on the Verdict could be construed to be a relevant judgment, the present claim was not timely filed. No civil judgment was obtained by Steel Engineers for uncompensated qualified services on the subject residence.</u></p> <p><u>It should be noted, however, that the Order with Findings of Fact and Conclusions of Law was not filed until 06/17/98. (Claim file p. 70) Although the present claim was filed on 08/07/98, 51 days later, this Order is only for attorney fees, the prior Judgment being the operative document for the substantive issues. Further, this Order is currently being appealed before the Utah Court of Appeals. (Claim file p. 3) I conclude that this Order is not the relevant order for determining timely filing of the claim.</u></p>
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#### IV. Complete Application Checklist

Y/N	Inits	Date	Issue
NO	ljb	10/19/98	<b>Is Application Complete?</b>
YES	ljb	10/19/98	A. Form submitted. (38-11-204(1)(c))
YES	ljb	10/19/98	B. Form completed. (38-11-204(1)(c))
yes	kks	8/7/98	C. Application fee submitted. (38-11-204(1)(b)) ICN No: <u>8222600100</u>
NO	ljb	10/19/98	D. Supporting documents submitted. (38-11-204(1)(c))
YES	ljb	10/19/98	1. Evidence of written owner contract (R156-38-204a(1)).
YES	ljb	10/19/98	a. Written contract between owner and original contractor/real estate developer; (R156-38-204a(1)(a)) or
n/a	ljb	10/19/98	b. Civil judgment with appropriate findings. (R156-38-204a(1)(b)) or
INC	ljb	10/19/98	2. Evidence of building permit compliance. 156-38-204a(2))

INC	ljb	10/19/98		a. Building permit; (R156-38-204a(2)(a)) or
n/a	ljb	10/19/98		b. Letter that building permit is not required. (R156-38-204a(2)(b))
YES	ljb	10/19/98		3. Evidence of compliance with licensing statute: (R156-38-204a(3))
YES	ljb	10/19/98		a. Original contractor is licensed; or
n/a	ljb	10/19/98		b. Original contractor is unlicensed, and
n/a	ljb	10/19/98		documentation of exemption from licensure; or
n/a	ljb	10/19/98		c. Real estate developer.
YES	ljb	10/19/98		4. Evidence that owner paid original contractor/real estate developer in full: (R156-38-204a(4))
n/a	ljb	10/19/98		a. Affidavit from original contractor/real estate developer; (R156-38-204a(4)(a)) or
YES?	ljb	10/19/98		b. Civil judgment with appropriate finding; (R156-38-204a(4)(b)) or
n/a	ljb	10/19/98		c. Affidavit that claimant was precluded from obtaining an affidavit or civil judgment, (R156-38-204a(4)(c)) and
n/a	ljb	10/19/98		independent evidence. (R156-38-204a(4)(c))
NO	ljb	10/19/98		5. Evidence that claimant brought civil action against original contractor/real estate developer for uncompensated qualified services: (R156-38-204a(5))
NO	ljb	10/19/98		a. Complaint, (R156-38-204a(5)(a)) and
NO	ljb	10/19/98		Notice of Commencement of Action; (R156-38-204a(5)(b)) or
n/a	ljb	10/19/98		b. Non-paying party's bankruptcy filing. (R156-38-204a(5)(c))

NO	ljb	10/19/98		6. Evidence that non-paying party failed to pay claimant for qualified services: (R156-38-204a(6))
NO	ljb	10/19/98		a. Civil judgment with appropriate finding; (R156-38-204a(6)(a)) or
n/a	ljb	10/19/98		b. Non-paying party's bankruptcy filing, (R156-38-204a(6)(b)) and
n/a	ljb	10/19/98		Independent evidence. (R156-38-204a(6)(b))
YES	ljb	10/19/98		7. Evidence that claimant made a reasonable attempt to collect the judgment from the non-paying party, or was precluded from doing so by the non-paying party's bankruptcy filing: (R156-38-204a(7))
n/a	ljb	10/19/98		a. Supplemental order, (R156-38-204a(7)(a)) and
n/a	ljb	10/19/98		b. Return of service of supplemental order, (R156-38-204a(7)(b)) and
n/a	ljb	10/19/98		c. If assets identified, Writ of Execution, (R156-38-204a(7)(c)) and
n/a	ljb	10/19/98		d. If assets identified, Return of Execution; (R156-38-204a(7)(d)) or
YES	ljb	10/19/98		e. Non-paying party's bankruptcy filing. (R156-38-204a(7)(e))
YES	ljb	10/19/98		8. Evidence that the residence is an owner-occupied residence. (R156-38-204a(1)(a)(i) and (ii))
YES	ljb	10/19/98		a. Owner-Occupied Residence Affidavit; (R156-204a(9)(a)) or
n/a	ljb	10/19/98		b. Civil judgment containing appropriate finding; (R156-38-204a(9)(b)) or
n/a	ljb	10/19/98		b. Evidence that claimant was unable to obtain an Owner-Occupied Residence Affidavit, (R156-38-204a(9)(c)) and
n/a	ljb	10/19/98		independent evidence. (R156-38-204a(9)(c))

YES	ljb	10/19/98	E. Signed Certification and Affidavit. (R156-38-204(8))
YES	ljb	10/19/98	F. Completed Certificate of Service. (R156-38-105(5)) and (6))
YES	ljb	10/19/98	G. Completed Demographic Questionnaire.

**V. Required Factual Findings**

Y/N	Inits	Date	
NO	ljb	10/20/98	<b>Does Claim Meet Findings Required Under § 38-11-203(1)?</b>



NO	ljb	10/20/98	<p>A. Claimant was a qualified beneficiary during the construction on the residence. (38-11-203(1)(a))</p> <p><u>Claimants claim under the names of Robert Kurth, the homeowner, and Steel Engineers, Inc., ID# 251091, a licensed contractor. (Claim file p. 1) Claimant's complaint, naming as plaintiffs Robert and Laura Kurth in their individual capacities and as trustees of the Kurth Revocable Trust, but not Steel Engineers, Inc., alleges a number of causes of action, all of which involved Robert and Laura Kurth as damaged homeowners rather than Steel Engineers as an unpaid subcontractor. (Claim file pp. 18-57) The Judgment on the Verdict subsequently entered in favor of Robert Kurth and Laura Kurth individually and as trustees of the Kurth Revocable Trust, awarded them judgment on the bases of breach of contract, breach of warranty, breach of duty of good faith and fair dealing, negligence, negligence per se for violating the building codes, fraud and misrepresentation, and punitive damages. (Claim file p. 59, 79) Likewise, the final Order with Findings of Fact and Conclusions of Law indicates that the plaintiffs are "Robert Kurth and Laura Kurth, individually, and as trustees for the Kurth Revocable Trust", and referenced the Judgment on Verdict in which plaintiffs prevailed.", but only ruled on issues of attorney fees. (Claim file pp. 70-71) There is no evidence presented in the entire file which would show that Steel Engineers, Inc. was involved in the underlying contract and civil action, including contracts, invoices, the filing of a civil action for uncompensated qualified services, or a judgment; or that the Kurths were claiming in the capacity of a qualified beneficiary who has contracted with the original contractor to provide qualified services as anticipated by the Act.</u></p> <p><u>Pursuant to § 38-11-102(14), a qualified beneficiary is a person who "(a) provides qualified services; (b) pays all necessary fees or assessments required under this chapter; and (c) registers with the division: (i) as a licensed contractor under Subsection 38-11-301(1) or (2) if that person seeks recover from the fund as a licensed contractor." Claimant alleges that it provided qualified services, namely, "dirtwork, constructed basement, foundation, subfloor, including concrete, rebar, steel beams, etc. Directed, supervised and controlled electrical, flooring, plumbing, metal roofing, a/c heat, etc. Supplied tools, chainsaws, fuel, generator, scaffolding, all-thread, columns, custom steel brackets, connections, etc." (Claim file p. 2) There is no evidence in the file other than claimant's bald assertion, however, that Steel Engineers, Inc. had any involvement in this claim. There is no contract to provide qualified services, invoice, judgment, or any other evidence. There is no evidence, likewise, in the file that the Kurths contracted with Lonetree to provide as a subcontractor the alleged qualified services for their property. (Claim file as of 10/20/98) The allegations in the complaint only indicate that the Kurths deemed that Lonetree was not performing well or fast enough on the contract, so threw Lonetree off the project and took over management of the construction. (Claim file pp. 18-57) While these allegations, which were affirmed by the judgment of the trial court, establish breach of contract, they do not establish that the Kurths contracted with Lonetree to provide qualified services.</u></p> <p><u>The mere fact that Robert Kurth is a key employee of Steel Engineers, Inc. does not make Steel Engineers, Inc., a separate entity from the Kurths, a party to any of the contracts or judgments included in the file. Accordingly, although Steel Engineers, Inc. is allegedly a licensed contractor and a member of the Residence</u></p>
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			<p><u>Lien Recovery Fund, the real party at interest is the Kurths in their individual capacity and as trustees of the Kurth Revocable Trust, neither of which are persons who have contracted to provide qualified services, have paid the initial assessment to the Fund, or are contractors licensed with the Division.</u></p> <p><u>Further, the file indicates that claimants Robert and Laura Kurth entered into the contract to purchase the home on 11/03/94, and alleged that construction continued on the home through September or December of 1995. (Claim file pp. 18-51) This is the only agreement between the Kurths and Lonetree in the claim file. If this agreement is to be construed as the Kurths' agreement with Lonetree to provide qualified services, its effective date is prior to the effective date of the Act set forth in § 38-11-107, which limits the application of the Act to contracts for qualified services with an effective date on or after 01/01/95.</u></p> <p><u>Section 38-11-204(1)(c) states that "To claim recovery from the find a person shall . . . (c)file with the division a completed application on a form provided by the division accompanied by supporting documents establishing: . . . (ii) that the person was a qualified beneficiary or laborer during the construction on the owner-occupied residence." Claimants have not claimed nor provided evidence to support a claim that they are claiming as laborers, but allege that they are claiming as qualified beneficiaries. The evidence, however, does not support their allegation, showing only that they are homeowners. The above language does not allow homeowners to recover from the Fund; homeowner rights, set forth in § 38-11-107, are limited to a restriction on liens and recovery from the homeowner's real property by persons not in privity of contract with the homeowners. Accordingly, claimants have not shown that they were qualified beneficiaries of the Fund at the time the construction was performed. Claimants have not shown that Steel Engineers, Inc. was connected in any way to the present claim. Even though Steel Engineers, Inc. is registered with the Fund and could be a qualified beneficiary, the Division deems its inclusion as a claimant in this claim to be claimant's attempt to hide the fact that the claimant at issue is the homeowner, who has no right to recover from the Fund.</u></p>
YES	ljb	10/19/98	<p>B. Owner contracted in writing with an original contractor for construction on the residence, or with a real estate developer for the purchase of the subject residence. (38-11-102(12); 38-11-204(3)(a))</p> <p><u>Claimant submitted a contract for the construction of a log home on his property for the price of \$249,250.00. (Claim file pp. 15-16) This contract is dated 11/03/94, and is signed by both parties. (Claim file pp. 15-16) There is also an addendum to the 11/03/94 contract, setting forth additional performance conditions but with the same price of \$249,250.00, and also dated 11/03/94. (Claim file p. 17)</u></p>
YES	ljb	10/20/98	<p>C. Original contractor was licensed or exempt from licensure at time of contract. (38-11-204(3)(a)(i))</p> <p><u>The original contractor, Lonetree Log Homes, ID# 250382, became licensed on 04/16/91. (LRF database) This license was active and in good standing through 05/12/98, at which time it was canceled due to the creation of a new entity. (LRF database) All of the construction at issue occurred during the period of time the contractor was licensed.</u></p>

INC	ljb	10/20/98	<p>D. Building permit was obtained if required. (38-11-204(3)(b))  <u>A copy of a building permit application is included in the claim filing, but does not appear to be stamped. (Claim file p. 14) The application becomes a building permit only when stamped. (Claim file p. 14) If this claim were otherwise viable, I would request a stamped copy from the claimant.</u></p>
YES	ljb	10/20/98	<p>E. Owner paid original contractor/real estate developer in full in accordance with the written contract and any amendments to it. (38-11-204(3)(c))  <u>The Judgment on Verdict submitted by claimant indicates that the contract dispute between the homeowners and the original contractor was resolved for the most part in homeowners' favor, and called for the original contractor to pay damages to the homeowner. (Claim file pp. 58-61) This judgment included a judgment on the contractor's mechanics' lien wherein he alleged that he had not been paid in full by the homeowners. (Id.)</u></p>
INC	ljb	10/20/98	<p>F. Owner or his tenant or lessee occupied, or subsequent owner purchased the subject residence as a primary or secondary residence within 180 days from the date of completion of construction. (38-11-102(13) and (18)).  <u>The owners' owner-occupied residence affidavit indicates that the residence was completed on 12/04/95, but that the occupancy provisions of the affidavit are "n/a". (Claim file p. 12) Although the homeowner affirmed that he was using the residence as a primary or secondary residence, he declined to provide the date he occupied the home, so I cannot determine whether the home was owner-occupied within the 180 day period. If this claim were otherwise viable, I would request this information from the claimant.</u></p>
YES	ljb	10/20/98	<p>G. Residence is a detached single family or duplex residence. (38-11-102(17))  <u>The building permit application indicates that the residence at issue is a "dwelling," (claim file p. 14), but it is clear from the allegations in the complaint and elsewhere in the claim that the residence is a single family residence.</u></p>
NO	ljb	10/20/98	<p>H. Contract between claimant and original contractor, subcontractor, or real estate developer was for qualified services. (38-11-204(3)(a)(i) and (c), 38-11-102(15))  <u>As discussed in A above, there was no contract between either the Kurths or Steel Engineers, Inc., and Lonetree for the provision of qualified services, although there was a contract between the Kurths and Lonetree for the purchase of qualified services to be provided by Lonetree.</u></p>

NO	ljb	10/20/98	<p>I. Claimant obtained a judgment against the non-paying party, which judgment indicates that claimant is entitled to payment by the non-paying party under an agreement to perform qualified services and was not paid for the services, or was precluded from obtaining a judgment by the non-paying party's bankruptcy filing. (Note that the non-paying party can be an original contractor, a subcontractor or supplier who contracted with the original contractor, or a subcontractor or supplier who contracted with a subcontractor or supplier.) (38-11-204(3)(c) and (d)(ii))</p> <p><u>The claimant homeowners obtained a judgment against Lonetree for damages for breach of contract, breach of duty of good faith and fair dealing and/or breach of warranty, negligence, and negligence per se in connection with their purchase of the residence, but did not receive a judgment showing that they were entitled to payment by Lonetree under any supposed agreement that the homeowners should perform qualified services. See A above. No complaint was filed or judgment obtained for payment of qualified services by claimant Steel Engineers. (Claim file as of 10/20/98)</u></p>
YES	ljb	10/20/98	<p>J. Claimant made a reasonable attempt to collect its judgment from the non-paying party, or was precluded from doing so by the non-paying party's bankruptcy filing. (38-11-204(3)(d)(iii) and (iv))</p> <p><u>Claimant made no attempt to collect its judgment from the non-paying party. (Claim file as of 10/20/98) It should be noted, however, that claimant stated that Lonetree appealed the Order with Findings on or about 07/12/98, which may have placed collection efforts on hold. (Claim file p. 3) Claimant subsequently supplemented the file with Lonetree Services, Inc.'s bankruptcy filing, dated 09/14/98. Assuming that the Judgment, dated 03/24/98, was the final order in this matter, the bankruptcy filing occurred on 09/14/98 (claim file p. 85), 174 days later. If the Order with Findings of Fact and Conclusions of Law was the final order in this matter, the relevant filing date was 06/17/98. (Claim file p. 70) The bankruptcy filing occurred 89 days later. Either date effectively precluded claimant from taking collection actions.</u></p>
YES	ljb	10/20/98	<p>K. There is adequate money in the Fund to pay the amount recommended. (38-11-203(1)(c)) (Current PTIF report)</p>

#### VI. Statutory Limitations on Claim Payment

Y/N	Inits	Date	Issue
NO	ljb	10/20/98	<b>There is no statutory limit on the amount of payment.</b>
NO	ljb	10/20/98	<p>A. Amount of claims pending on this residence is less than or equal to \$75,000. (38-11-203(4)(a)(i))</p> <p><u>Claimants have claimed \$545,000.00 for qualified services, far over the \$75,000 limit. Claimant has further claimed \$120,000.00 for fraud and misrepresentation damages and \$80,000 for punitive damages, both of which are probably not collectable from the Fund even if the claim were otherwise valid.</u></p>

YES	ljb	10/20/98	B. Amount of money paid to claimant on prior claims plus amount to be paid on current claim is less than or equal to \$500,000. (38-11-203(4)(a)(ii)) <u>No other claims have been paid to these claimants.</u>
YES	ljb	10/20/98	C. The fund has made no unreimbursed payments on behalf of the claimant. <u>No claims have been paid by the Fund on behalf of these claimants.</u>

## VII. Amount of Payment

### Informal Claims/Civil Judgment only on Subject Residence

A1.	B. CIVIL JMT AWARDS (APPLIC. SECTION 1)	C. AMOUNTS SUPPORTED BY EVIDENCE	D. DIFFERENCE (column C - column B = )	E1. EXPLANATION
2. PRINCIPAL OR QUALIFIED SERVICES	\$545,000.00	\$0.00	\$0.00	See Explanation E2 Below
3. PRE-JMT COSTS	\$0.00	\$0.00	\$0.00	See Explanation E3 Below
4. PRE-JMT ATTORNEY FEES	\$35,821.96	\$0.00	\$(35,821.96)	See Explanation E4 Below
5. PRE-JMT INTEREST	\$0.00	\$0.00	\$0.00	See Explanation E5 Below
6. POST-JMT COSTS	\$0.00	\$0.00	\$0.00	See Explanation E6 Below
7. POST-JMT ATTY FEES	\$0.00	\$0.00	\$0.00	See Explanation E7 Below
8. POST-JMT INTEREST	\$28,710.00	\$0.00	\$(28,710.00)	See Explanation E8 Below
9. <b><u>TOTALS</u></b>	\$609,531.96	\$0.00	\$(609,531.96)	See Explanation E9 Below
10. PRE-JMT EXPENSES	\$35,821.96	\$0.00	\$(35,821.96)	
11. POST-JMT EXPENSES	\$28,710.00	\$0.00	\$(28,710.00)	

## EXPLANATION

E2 The judgment awarded the claimants damages related to their purchase of a residence, not for Lonetree's failure to pay for contracted for qualified services. ( Claim file pp. 58-61)  
Nothing was awarded for qualified services as required by the express provisions of the Act, so nothing is payable on this claim. It should be noted that claimant has also claimed \$80,000 for punitive damages and \$120,000.00 for fraud and misrepresentation, none of which are payable by the Fund.

E3 \_\_\_\_\_

E4 \_\_\_\_\_

E5 \_\_\_\_\_

E6 \_\_\_\_\_

E7 \_\_\_\_\_

E8 \_\_\_\_\_

E9 \_\_\_\_\_

## VIII. Demographic Data

Source: Claimant's Demographic Questionnaire.

1. Type of business entity used by claimant:  
☐ Sole Proprietorship ☐ Partnership ☐ Joint Venture ☐ Corporation ☐ LLC ☒ Other

2. Number of employees employed by claimant:  
☐ None ☐ 1-4 ☐ 5-9 ☐ 10-19 ☐ 20-49 ☐ 50-99 ☒ N/a ☐ 100+

3. Claimant's gross annual revenue:  
☐ 0-\$9,000 ☐ \$10,000-\$49,000 ☐ \$50,000-\$99,000 ☐ \$100,000-\$249,000  
☐ \$250,000-\$499,000 ☐ \$500,000-\$999,000 ☐ \$1,000,000-\$4,999,000 ☒ n/a \$5,000,000+

4. Number of years claimant has been in business:  
☐ 0-1 ☐ 2-4 ☐ 5-9 ☐ 10-14 ☐ 15-19 ☒ 20+

5. Capacity in which claimant is claiming:  
☐ General Contractor ☐ Subcontractor ☐ Supplier ☒ Other homeowners in individual capacity and as trustees for their revocable trust

6. Is claimant licensed through DOPL? ☐ yes ☒ no

7. Type of business entity used by non-paying contractor or real estate developer, if known:  
☐ Sole Proprietorship ☐ Partnership ☐ Joint Venture ☒ Corporation ☐ LLC ☐ Unknown

8. Number of employees employed by non-paying party, if known:  
☐ None ☐ 1-4 ☐ 5-9 ☒ 10-19 ☐ 20-49 ☐ 50-99 ☐ 100+ ☐ Unknown

9. Non-paying party's gross annual revenue, if known:						
<input type="checkbox"/> 0-\$9,000	<input type="checkbox"/> \$10,000-\$49,000	<input type="checkbox"/> \$50,000-\$99,000	<input type="checkbox"/> \$100,000-\$249,000			
<input type="checkbox"/> \$250,000-\$499,000	<input type="checkbox"/> \$500,000-\$999,000	<input type="checkbox"/> \$1,000,000-\$4,999,000	<input type="checkbox"/> \$5,000,000+			
<input checked="" type="checkbox"/> Unknown						
10. Number of years non-paying party has been in business, if known:						
<input type="checkbox"/> 0-1	<input type="checkbox"/> 2-4	<input type="checkbox"/> 5-9	<input checked="" type="checkbox"/> 10-14	<input type="checkbox"/> 15-19	<input type="checkbox"/> 20+	<input type="checkbox"/> Unknown
11. Is non-paying party licensed through DOPL? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> Unknown						

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**Minutes from Board Meeting Discussion**  
**Claim No. LRF-1998-0807-01**

**October 21, 1998**

Ms. Barclay shared the details of this claim with the Board. It is likely this claim will be appealed if it is denied, as Ms. Barclay is recommending. The attorney who represented the homeowners, Robert Kurth, appears to be the homeowners' son. When discussing the possibility of filing a claim with Kathie Schwab and Ms. Barclay, Attorney Kurth was told that homeowners are not eligible for payment from the Fund. Kurth disagreed, saying he interpreted the statute differently. When the claim was filed, Steel Engineers appeared as the claimant on the claim application. All the contracts and legal papers are in the homeowners' name; nothing refers to Steel Engineers. The homeowners obtained a judgment for approximately \$880,000. The contract price of the residence was approximately \$450,000. The judgment awarded \$120,000 for fraud and \$80,000 for punitive damages. Ms. Barclay indicated that a conditional denial letter could be sent asking for documentation that Steel Engineers were subcontractors on this residence or the claim could be denied without a conditional denial letter. Mr. Larsen suggested that the claim be denied outright if Mr. Patterson is comfortable he can defend an appeal. Ms. Barclay will send a letter of denial to Attorney Kurth after meeting with Mr. Patterson.

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**OF THE DEPARTMENT OF COMMERCE**  
**OF THE STATE OF UTAH**

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IN THE MATTER OF THE LIEN RECOVERY : **ORDER**  
FUND CLAIM OF **STEEL ENGINEERS INC./** :  
**ROBERT KURTH** REGARDING THE :  
CONSTRUCTION BY **LONETREE SERVICES,** : Claim No. LRF-1998-0807-01  
**INC., BUILDER, ON THE RESIDENCE OF** :  
**ROBERT KURTH.** :

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Being apprized of all relevant facts, the Director of the Division of Occupational and Professional Licensing finds, pursuant to the requirements for a disbursement from the Lien Recovery Fund set forth in Utah Code Ann. § 38-11-203(3)(1998), that the claimant has not complied with these requirements for the following reasons:

1. Claimant Robert Kurth ("Kurth") is the owner of the residential property at issue, as shown by the written construction contract and representations on the claim application. Kurth is neither a qualified beneficiary of the Lien Recovery Fund ("the Fund"), nor does he represent himself to be a laborer within the meaning of the Act. Under the provisions of Utah Code Ann. §§ 38-11-203(1) and (2) and § 38-11-204(1)(c)(iii), a claimant must be either a qualified beneficiary or a laborer to recover from the Fund. Accordingly, Kurth is not eligible to recover from the Fund.

2. Kurth, rather than claimant Steel Engineers, Inc. ("Steel Engineers"), is the real party in interest, as shown by the following:

a) the civil action purporting to be claimant's civil action against the non-paying party, required by Utah Code Ann. § 38-11-204(3)(c)(i), was filed by Robert and Laura

Kurth in their individual capacities and as trustees for the Kurth Revocable Trust, and not by Steel Engineers;

b) the civil judgment purporting to be claimants' judgment against the non-paying party, required by Utah Code Ann. § 38-11-204(3)(c)(ii), was in favor of Robert and Laura Kurth in their individual capacities and as trustees for the Kurth Revocable Trust, and not in favor of Steel Engineers; and

c) oral and written representations by claimants' counsel.

3. Steel Engineers is a contractor licensed in Utah under the Construction Trades Licensing Act, and has been a qualified beneficiary of the Fund since January 1, 1995. Because Steel Engineers is a corporation, however, it is a legally separate and distinct person from Kurth in his individual capacity. Claimant has produced no evidence to justify piercing the corporate veil so that Steel Engineers can be deemed to be Kurth's alter ego. Therefore, Steel Engineers' registration as a qualified beneficiary of the Fund does not make Kurth, in his individual capacity, a qualified beneficiary of the Fund.

4. Claimants presented no evidence of any agreement requiring Kurth to provide qualified services for the subject residence, as required by Utah Code Ann. § 38-11-204(3)(b)(i). Similarly, claimants provided no evidence of a judgment in Kurth's favor for uncompensated qualified services, as required by Utah Code Ann. § 38-204(3)(c)(ii). The judgment in the homeowners' favor was only for damages related to breach of contract and fraud arising from the construction of and workmanship on the residence.

5. Claimants submitted no evidence showing that Steel Engineers is entitled to recover this claim from the Fund under the provisions of Utah Code Ann. § 38-11-204(3).

Specifically, claimants provided no evidence that:

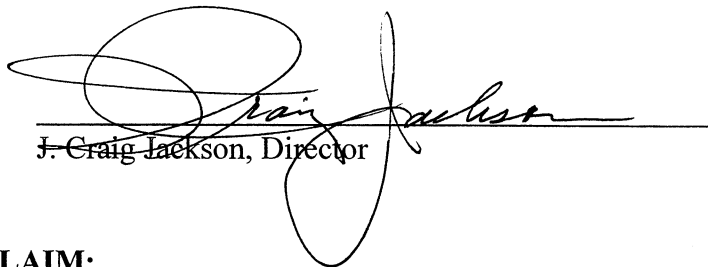
- a) Steel Engineers entered into an agreement with the original contractor and non-paying party, Lonetree Services, Inc., ("Lonetree"), to provide qualified services on the subject residence, as required by Utah Code Ann. § 38-11-204(3)(b)(i);
- b) Steel Engineers actually provided qualified services on the residence;
- c) Lonetree subsequently failed to pay Steel Engineers for the qualified services, as required by Utah Code Ann. § 38-11-204(3)(b)(i);
- d) Steel Engineers filed an action against Lonetree for payment for the qualified services within 180 days from the last date qualified services were provided, as required by Utah Code Ann. § 38-11-204(3)(c)(A); or was precluded from doing so by Lonetree's bankruptcy filing, as provided for in Utah Code Ann. § 38-204(3)(c)(iv);
- e) Steel Engineers filed a Notice of Commencement of Action, as required by Utah Code Ann. § 38-11-204(3)(c)(i)(B);
- f) Steel Engineers obtained a judgment against Lonetree for payment of the qualified services, as required by Utah Code Ann. § 38-204(3)(c)(ii), or was precluded from doing so by Lonetree's bankruptcy filing, as provided for in Utah Code Ann. § 38-204(3)(c)(iv); and
- g) Steel Engineers was involved in the present claim in any respect, aside from the representation on the claim application Kurth is Steel Engineers's "key employee"; and claimant's counsel's oral representation that Kurth is Steel Engineers's CEO, and 25% stockholder. In fact, Kurth's counsel represented that Steel Engineers was named as a claiming party solely for the purpose of providing a qualified beneficiary claimant for this claim.

6. Kurth entered into the contract to purchase the subject residence on November 3,

1994, and claims that construction on the home continued through September or December of 1995. Utah Code Ann. § 38-11-107(1) limits lien restriction under the Act and correlatively, recovery from the Fund, for qualified services provided "under an agreement effective on or after January 1, 1995". If the Division were to construe the written contract between Kurth and Lonetree as the agreement for qualified services required by Utah Code Ann. § 38-11-204(3)(b)(i), as urged by claimants, the effective date of the agreement arose prior to the effective date of the Act.

WHEREFORE, the Director of the Division of Occupational and Professional Licensing orders that the above-encaptioned claim is denied.

DATED this 8<sup>th</sup> day of December, 1998.

  
J. Craig Jackson, Director

**CHALLENGE AFTER DENIAL OF CLAIM:**

Under the terms of UTAH ADMINISTRATIVE CODE, R156-46b-202(j) (1996), this claim has been classified by the Division as an informal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**

**MAILING CERTIFICATE**

I hereby certify that on the 9 day of DECEMBER, 1998, a true and correct copy of the foregoing Order was sent first class mail, postage prepaid, to the following:

ROBERT KURTH  
STEEL ENGINEERS, INC.  
716 W MESQUITE AVE.  
LAS VEGAS, NV 89106

Claimant